



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0064]

RIN 1625-AA11

Regulated Navigation Area, Gulf of Mexico; Mississippi Canyon

Block 20, South of New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

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SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) in the Mississippi Canyon Block 20 in the Gulf of Mexico. This RNA is needed to protect the subsurface monitoring and collection dome system above a leaking wellhead from the potential hazards of vessels anchoring, mooring or loitering on or near the oil and gas discharge area. Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port New Orleans, or his designated representative.

DATES: This rule is enforced with actual notice from April 4, 2013, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the Code of Federal Regulations on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2013-0064. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, excluding federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication,

please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander Brandon Sullivan, Coast Guard Sector New Orleans; telephone 504-365-2281, e-mail [Brandon.J.Sullivan@uscg.mil](mailto:Brandon.J.Sullivan@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

#### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by

the Coast Guard when you successfully transmit the comment. If you fax, hand deliver or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the

Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not plan on holding a public meeting, but you may submit a request for one prior to the comment period ending, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## B. Regulatory History and Information

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment, pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency

for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying issuance of this rule would be impracticable and contrary to public interest. After installation of a containment dome, any vessels anchoring, mooring or loitering in the area covered by this rule have the potential to cause grave environmental impacts and greatly reduce the effectiveness of the containment and monitoring system for the affected wellhead. The necessity of this dome and RNA were unexpected.

Anchoring, mooring or loitering in the area covered by the rule could potentially cause structural damage and failure to the containment dome, associated hoses and systems, wellheads, well piping system and closure valves, causing the discharge of crude oil and gas into the Gulf of Mexico. The protection of this area is crucial in reducing negative impacts to wildlife and to protect the subsea collection and monitoring system around a damaged subsea oil well.

Under 5 U.S.C. 553(d) (3), for the same reasons as discussed above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. A 30 day delay in this rule's effective date would be impracticable and contrary to the public interest in

reducing the potential catastrophic impacts to the environment and wildlife from a system failure.

The Coast Guard will, however, review all comments submitted pertaining to this interim rule, and will consider revising the RNA to reflect any comments deemed pertinent and necessary by the Coast Guard before a final rule is issued.

### C. Basis and Purpose

The Coast Guard's basis for this rule includes 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S. C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. The purpose of the rule is to establish a regulated navigation area for the protection of oil spill containment measures in the Gulf of Mexico.

On September 16, 2004, a mudslide resulted from Hurricane Ivan's storm surge that toppled the Mississippi Canyon (MC) 20 Platform A. The platform's wells were covered by more than 100-feet of mud and sediment. As a result of structural damage, plumes containing crude oil and gas have been discharging into the Gulf of Mexico, creating a sheen on the surface of the water.

The responsible party for this incident has undertaken an operation to install a containment dome over the affected area, which would catch the oil rising from the sea floor. Many vessels continue to operate in the affected area. Anchoring, mooring, or loitering in the area above the containment dome

could potentially damage the dome, or reduce its effectiveness. Therefore, regulating navigation in this area is necessary to protect the collection and subsurface monitoring system and to reduce the potentially negative impacts to the environment from the pluming oil.

#### D. Discussion of the Interim Rule

This rule creates a regulated navigation area of a 300-foot diameter centered at 28°52'17"N, 089°10'50"W, and extending the entire water column from the surface to the sea floor. Vessels may transit freely through this area, but must not anchor, moor, or loiter, unless they have been granted special authorization by the Captain of the Port, New Orleans.

#### E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The impacts on navigation users are expected



to be minimal because the enforcement of this RNA does not prohibit vessels from transiting through the area described above. This RNA prohibits only the anchoring, mooring or loitering of vessels within the 300-foot diameter section of the protected area.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to anchor, moor, or loiter in the regulated area. This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons. The establishment of this RNA encompasses a limited area of the Gulf of Mexico and there will be minimal to no impact to commercial vessel traffic. This RNA only prohibits vessels from mooring, anchoring or loitering in the area described above. Transiting through the above described area is authorized and notification of the enforcement of this RNA will be disseminated to the marine community through broadcast notice to mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small business entities that question or complain about this rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally

Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we

did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a regulated navigation area of a 300-foot diameter, extending the entire water column from the water surface to the seabed. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (Water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read

as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S. C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.840 to read as follows:

§ 165.840 Regulated Navigation Area, Gulf of Mexico:

Mississippi Canyon Block 20, South of New Orleans, LA.

(a) Effective date. This section is effective on April 4, 2013.

(b) Location. The following area is a Regulated Navigation Area: A 300-foot diameter area at the water surface centered on the following coordinates: 28°52'17"N 089°10'50"W, and extending the entire water column from the surface to the seabed.

(c) Regulations.

(1) In accordance with the general regulations in § 165.13 of this part, all vessels are prohibited from anchoring, mooring or loitering in the above described area except as authorized by the Captain of the Port, New Orleans.

(2) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted by telephone at (504) 365-2200.

Dated: April 4, 2013

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R. A. Nash

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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Date: 04/29/2013]